

IN THE SUPREME COURT OF THE UNITED STATES

No. 23-975

SEVEN COUNTY INFRASTRUCTURE COALITION, ET AL., PETITIONERS

v.

EAGLE COUNTY, COLORADO, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

MOTION OF THE UNITED STATES FOR DIVIDED ARGUMENT

Pursuant to Rule 28.4 of this Court, the Solicitor General, on behalf of the federal respondents supporting petitioners, respectfully moves to divide the oral argument for petitioners in this case. The Solicitor General requests the following division of argument time: 15 minutes for petitioners, 15 minutes for the federal respondents supporting petitioners. Counsel for petitioners has agreed to that allocation.

The National Environmental Policy Act of 1969 (NEPA), Pub. L. No. 91-190, 83 Stat. 852 (42 U.S.C. 4321 et seq.), "declare[d] a national policy," intended to "encourage productive and enjoyable harmony between man and his environment." 42 U.S.C. 4321. NEPA's

core procedural mandate requires federal agencies to prepare an environmental impact statement in connection with a proposal for "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. 4332(2)(C).

Petitioners Seven County Infrastructure Coalition and Uinta Basin Railway, LLC filed an application with the Surface Transportation Board (Board) to authorize the construction of a railway line connecting the Uinta Basin with the national rail network in Utah. Pet. App. 6a. The Board prepared an environmental impact statement analyzing a range of potential environmental consequences of the project before ultimately deciding to authorize the railway line. Id. at 6a-13a. The non-federal respondents filed petitions for review in the court of appeals challenging the Board's NEPA analysis under the Administrative Procedure Act (APA), 5 U.S.C. 706(a)(2). Id. at 13a. Petitioners intervened in support of the Board. See id. at 6a.

The court of appeals partially vacated the Board's environmental impact statement. Pet. App. 70a. The court held that the Board had adopted an unduly limited view of the scope of environmental impacts the Board was required to analyze, concluding that the statement should have included additional analysis of the upstream environmental effects of increased oil production in the Uinta Basin following completion of the new railway line and the localized downstream effects of ultimately

processing some of that oil in refineries in Texas and Louisiana. Pet. App. 28a-37a. The court also found several flaws in the Board's analysis of the downline effects of possible rail accidents and wildfires, as well as in its analysis of the potential harms to downline water resources. See Pet. App. 40a-47a.

Petitioner then sought review in this Court, which granted certiorari. The federal respondents have filed an opening brief on the merits supporting petitioners.

Dividing the argument time for petitioners between petitioners and the federal respondents supporting petitioners would be of material assistance to this Court. The federal government has a substantial interest in this case because it involves a challenge to an environmental impact statement prepared by the Board, which is a federal agency, and because the question presented concerns the proper interpretation and application of a federal environmental statute that applies to "all agencies of the Federal Government." 42 U.S.C. 4332. Petitioners of course have a substantial interest in this case because the partial vacatur of the Board's environmental impact statement is an impediment to the construction of the new railway line that the Board authorized.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

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